RECENT IMPORTANT DECISIONS

AGENCY—AGENT'S LIABILITY WHEN NAME OF PRINCIPAL IS UNDISCLOSED. —Defendant, a well known firm of marine insurance agents, employed plaintiff to render services in releasing a stranded vessel. The names of the underwriters in whose behalf the work was done were not disclosed. *Held,* defendants were not personally liable to pay for the services. *Great Lakes Towing Co.* v. *Worthington et al.* (1906), — D. C., W. D., N. Y. —, 147 Fed. Rep. 926.

The case is briefly reported and no authorities are cited. The ratio decidendi seems to be that it was the duty of the plaintiff to ascertain the names of the insurers, as they knew the nature of the defendants' business and their character as agents, and as such information might easily have been obtained. While this principle finds some support, it is believed that it is against the weight of authority. When neither the fact of agency nor the name of the principal is disclosed, the agent is undoubtedly liable personally. "The same principle will apply to contracts made by agents, where they are known to be agents, and acting in that character, but the name of their principal is not disclosed; for, until such disclosure, it is impossible to suppose, that the other contracting party is willing to enter into a contract, exonerating the agent, and trusting to an unknown principal, who may be insolvent or incapable of binding himself." STORY, AGENCY, § 267. To the same effect: TIFFANY, AGENCY, p. 362; *Thomson* v. *Davenport,* 9 B. & Cress, 78; *Worthington* v. *Cowles,* 112 Mass. 30; *Soutter* v. *Stoeckle,* 6 Ohio Dec. Reprint, 1054; *Cobb* v. *Knapp,* 71 N. Y. 348. In *Holt et al.* v. *Ross,* 54 N. Y. 472, defendant, an express company, presented a draft to the plaintiffs for payment which had been fraudulently endorsed. Plaintiffs recovered the amount of the draft. "It matters not that the general business of the express company was to act as agent for others." * * * "It was not the duty of the plaintiffs to inquire before paying whether the express company was acting as principal or agent." WHARTON, AGENCY, § 502, would limit the rule to trades where it has been established by usage, as in the case of auctioneers and factors, citing *Fleet* v. *Murton,* L. R. 7 Q. B. 126; *Hutchinson* v. *Tatham,* L. R. 8 C. P. 482. In principle it would seem that the defendants in the main case should be personally liable. They were the conspicuous contracting parties. It was in their power to escape liability by naming their principal. Failing to do so they have elected to act on their own credit. The doctrine of the principal case finds qualified support in *Lyon* v. *Williams,* 5 Gray, 557, and in *Fleet* v. *Murton,* and *Hutchinson* v. *Tatham, supra.*

ATTORNEY AND CLIENT—ADMISSION TO PRACTICE—MORAL CHARACTER.— Revisal of 1905 of North Carolina, § 207, relating to the admission of attorneys, provides that, "all applicants who shall satisfy the court of their competent knowledge of the law shall receive license to practice in the courts of this State." Section 208 provides that before being allowed to stand an examination, each applicant must comply with certain conditions, among which is one that, "he must file with the clerk of the court, a certificate of good moral char-

acter, signed by two attorneys who practice in the court." *Held,* that one who complies with the formal prerequisites is entitled to become an applicant and to be examined, and if he shows himself to have competent knowledge, it is the duty of the court to license him without investigating his general moral character. *In re Applicants for License* (1906), — N. C. —, 55 S. E. Rep. 635.

The decision of the court seems to rest upon the strict construction of the statute, as revised in 1905. The validity of the statute was assailed with much force but with little effect. It was argued that the admission of attorneys to practice is a judicial act and that it is an unwarranted exercise of judicial power on the part of the legislature to enact a statute requiring the admission of an applicant to practice when it is found that he has competent knowledge of the law. Section 8 of the Declaration of Rights provides, that attorneys when admitted to practice, are officers of the court, whose appointment and conduct are under the control of the court. The court admits the judicial side of the argument, but maintains that the legislature has ever had the power to say what the qualifications for the following of any profession must be, and spends many pages in support of an opinion deciding a question which seems to be so eminently well established by the weight of authority. The charges against these applicants are as to one, that he is a usurer and extortioner, who has preyed upon and swindled the poor and ignorant negroes of the community; as to the other the charge is, burning his own store for the insurance money; and the general charge as against both is, bad moral character. Yet the court holds the law powerless to keep such men from desecrating the high profession of the law. The cases cited in the majority opinion to justify its holding are in many instances cited in the dissenting opinion to uphold the opposite view. *Ex parte Secombe,* 60 U. S. (19 How.) 9, 1856, seems not fully in accord with the majority in the principal case as to the common law holding, for the court in that case say, "In Common Law courts the determination of who is qualified to become an attorney and counsellor rests exclusively with the court." The court is upheld by *Ex parte Yale,* 24 Cal. 242, 1864. But is not upheld by many of our best courts: *In re Attorney's License* (1848), 21 N. J. L. (1 Zab.) 345; *State* v. *Byrkett* (1895), 4 Ohio Dec. 89; *In re Splane* (1889), 123 Pa. St. 527, 540. In the last case a similarly peremptory revisionary statute was held an assumption of judicial power by the legislature, and unconstitutional, in so far as it left no discretion on the part of the court to reject an applicant. The same holding is found in *In re Goodell* (1879), 48 Wis. 693, though with some qualifications.

BAILMENT—HIRING—CONVERSION.—Defendants hired a horse of plaintiff to be used in hauling an oil well stem to Littleton. On the day following the arrival at Littleton the horse was used in hauling the stem to the Johnston well, some distance further, and hauling another stem back to Littleton. Two days later, while being driven back home, the horse died. *Held,* that unless the deviation from the journey mentioned in the hiring contributed materially to the death of the horse, defendants were not liable. *Carney* v. *Rease et al.* (1906), — W. Va. —, 55 S. E. Rep. 729.